



Mass Insurance Federation

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Improve Competitive Negotiations Through Regulatory Modernization

An Analysis for the Massachusetts Auto Labor Rate Study Commission

January 25, 2022

The Automobile Damage Appraiser Licensing Board was created in 1982 pursuant to G. L. c. 26, Section 8G, inserted by St. 1981, c. 775, Section 1. The ADALB remains today as a relic of the “fixed and established” regulatory scheme, despite other moves to make auto insurance and collision repairs more competitive. Today, collision repair facilities use the ADALB licensing law and regulations to forewarn an appraiser that any disagreements in the appraisal process could risk their license through filing a complaint with the ADALB which requires in-person attendance to defend, creating unnecessary tension in repair negotiations. Allowing the ADALB to become a court of claims, which it is not statutorily permitted to do, is not helping collision repair facilities but rather forcing both sides into corners and stifling price negotiations.

The ADALB’s enabling statute also increases tensions needlessly between insurers and repair facilities in the following language:

*The board, after due notice and hearing, shall cancel for a period not exceeding one year, any license issued by it to, and cancel the registration of, any person who has been shown at such hearing to have been guilty of fraud, deceit, gross negligence, **incompetence** or **misconduct** or conflict of interest in the preparation or completion of any motor vehicle damage report, or that the holder of such license has permitted or suffered his official seal to be affixed to any auto damage report not prepared by him. (emphasis added)*

Collision repair facilities often send complaints to the ADALB based on their disagreements in negotiations citing “incompetence” or “misconduct”, which are overly broad terms that can be applied to virtually every interaction. In the newest iterations of this rhetoric, a collision repair trade association has issued a public call-to-action to repair facilities, encouraging them to send complaints into the ADALB when insurer appraisers are not writing estimates that follow every manufacturers’ suggested repair procedure (see the Federation’s statement on the impact of ADAS procedures on repairs). Both sides of the repair process know that many manufacturers’ procedures are not necessary if they are not dictated by specific technical repair procedures, yet a call to use the ADALB as a threat in negotiations continues. Clearly, the terms “incompetence” or “misconduct” are far too broad and allow for too much subjective judgment about an appraiser’s activities. The word “incompetence” should be deleted from the statute, and the word “misconduct” should be modified by the adjective “unlawful” or “illegal”.

Without the constant threat of having to physically appear before the ADALB to defend their licenses, appraisers would have more freedom to negotiate with repair facilities. Instead, appraisers find themselves following specific steps to prevent challenges to their licenses, creating a rigid environment for negotiations.

Another way that consumers lose through the text of the ADALB's enabling statute is as follows:

*If the appraiser and the repair shop fail to agree on a price for repairs, the **appraiser shall not obtain a competitive estimate from another repair shop** unless the owner of such other shop, or his authorized agent, either of which shall be a licensed appraiser, has inspected the vehicle and prepared an itemized estimate of repairs to be performed. No such competitive estimates shall be obtained by the use of photographs, telephone calls or in any manner other than a personal inspection.*

This single-sided mandate stymies a competitive market by preventing appraisers from sourcing alternative locations without the express consent of the shop owner. Lifting such requirements would allow for competitive pricing to occur, which in many states drives the prices higher over time. Instead, Massachusetts continues down a path of policies designed to artificially price repairs, which has helped suppress labor rates over time.

Consumers are not the only individuals hurt through the environment created by the ADALB. Prospective new appraisers face numerous burdens of entry into this career path. In particular, the examination process is burdensome, lengthy, and most importantly quite antiquated. As an example, the Part 2 examination is significantly outdated and an unnecessary component of the licensing process. The Federation understands the legislative desire to regulate these licensees, but a more prudent approach must be considered to improve this process.

Finally, the ADALB has regularly overstepped its limited statutory role of licensing auto damage appraisers, and insurers have been forced to either sue the Board or convince regulators that it has exceeded its legal authority in its actions. By way of example, in 1983, Allstate sued the ADALB over the Board's interpretation of a portion of its then regulation that prohibited an insurer from referring *"the claimant to any repair shop or require that repairs be made by a specific repair shop or individual, provided that the claimant, upon his or her request, may be furnished with the names of no fewer than four repair shops listed in alphabetical order. . . ."* The Board interpreted this portion of the regulation as *"imposing a total prohibition on communications between insurance companies and their customers regarding automobile repair shops."* *Allstate v. ADALB*, 399 Mass, 850 (1987). Allstate sued the Board for violating its rights under the First Amendment to the U. S. Constitution.

The Massachusetts Supreme Judicial Court did not reach the constitutional issue in its decision, instead finding that the Board had, in effect, misinterpreted its own regulation and concluding, as follows: *"Providing a list of possible repair shops or individuals at the customer's request and leaving the choice open to the customer whether to use any of the shops or individuals on the list*

is not prohibited by the words of the regulation or required by the enabling statute.” The Court also noted: *“The statute vested the board with the authority to license and regulate individuals to appraise damages to motor vehicles.”* This attempted regulatory overreach, the Federation asserts, would have further decreased competition in Massachusetts, thus impacting the labor rate for all collision repair facilities.

Similarly, in 2006, Commerce was forced to sue the ADALB over its interpretation of one part of its regulation requiring insurers to use a particular manual with respect to the use of paint and materials in connection with refinishing and because of the Board’s violation of the Open Meeting Law. *See Commerce Insurance Company v. [Individual Members of the ADALB]*, Civil Action No, 06-0669 (Superior Court, 2006). The Attorney General declined to represent the Board members, and they agreed to the entry of judgment under which they effectively rescinded their reinterpretation of the regulation and agreed that the Open Meeting Law applies to the Board. Again, in the Federation’s view, this attempted change to the regulatory scheme was designed to create government price fixing, through the use of the collision repair industry’s preferred manual. Such measures impact the total cost of collision repairs and prevent market forces from properly adjusting costs.

It is time that the Board be solely limited to what the Legislature intended when it created the ADALB – licensing auto damage appraisers.

The ADALB is a relic of the old regulatory scheme for auto insurance in Massachusetts, and such licensing does not even exist for other insurance appraisers in the Commonwealth (e.g., homeowners insurance, commercial insurance, etc.) While the Board is well-balanced and well-staffed today, that does not change the manner in which it is used by some collision repair facilities to infringe on the statutory role and authority of the Division of Insurance and the role of the judiciary. The Board’s mission must be updated to reflect the current environment, be limited to its statutory authority, and end the abusive nature of the complaint process.

The Federation has given specific examples of the modernization needed in the statute, but the regulatory scheme should also be changed to allow the Chair and staff of the Board to review complaints and take a vote of the Board on which complaints are justified or frivolous prior to requiring any individual to make an in-person appearance.

As we bring balance and modernization to the use of the Board’s authority and its objectives, tensions can be lessened between insurance appraisers and collision repair facilities, allowing for robust negotiations to take place and the market to properly dictate the cost of repairs.